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**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NORTHPEAK WIRELESS, LLC,

Plaintiff,

v.

3COM CORPORATION, *et al*,

Defendants.

Case No: 3:09-cv-00602-SI

**JOINT CASE MANAGEMENT  
STATEMENT**

Judge: The Honorable Susan Illston  
Courtroom 10, 19<sup>th</sup> Floor

Pursuant to the Court's Order setting a Further Case Management Conference (Dkt. No. 550) and Judge Illston's Standing Orders, Plaintiff NorthPeak Wireless, LLC ("NorthPeak"), Defendants<sup>1</sup>, and Intervenor Intel Corporation ("Intel") hereby jointly submit this Joint Case Management Statement.

## **I. JURISDICTION AND SERVICE**

This is a patent infringement action brought pursuant to 35 U.S.C. § 101, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. On January 21, 2009, the U.S. District Court for the Northern District of Alabama granted Defendants' motion to transfer venue to the Northern District of California. NorthPeak opposed the motion to transfer and contends that it is not subject to jurisdiction in California. All parties have been served.

## **II. FACTS**

NorthPeak initially alleged that Defendants and intervenor Intel had infringed two patents: U.S. Patent No. 4,977,577 ("the '577 Patent") and US Patent No. 5,987,058 ("the '058 Patent"), both of which expired on November 2, 2008. The patents were subjected to reexamination after NorthPeak filed this action. The Patent Office issued reexamination certificates canceling the asserted claims of the '058 Patent and confirming the patentability of the asserted claims of the '577 Patent.

The '577 Patent is entitled "Wireless Alarm System." NorthPeak asserts that the Patent generally claims certain types of spread spectrum wireless transmitters and methods and is infringed by WiFi-enabled devices sold by Defendants and Intel that comply with the 802.11b

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<sup>1</sup> "Defendants" refers to 3Com Corporation ("3Com"), ACER America Corporation ("Acer America"), ASUS Computer International ("ASUS"), Belkin International Inc. ("Belkin"), Buffalo Americas, Inc. ("Buffalo"), Dell, Inc. ("Dell"), D-Link Systems, Inc. ("D-Link"), Epson America, Inc. ("Epson"), Fujitsu America, Inc. ("FAI"), Gateway, Inc. ("Gateway"), Hewlett-Packard Company ("HP"), NETGEAR, Inc. ("NETGEAR"), SMC Networks, Inc. ("SMC"), SonicWALL, Inc. ("SonicWALL"), Sony Electronics Inc. ("SEL"), Sony Computer Entertainment America LLC, a successor-in-interest to Sony Computer Entertainment America Inc. ("SCEA"), Toshiba America Information Systems, Inc. ("TAIS"), Trendnet Systems, Inc. ("Trendnet"), Trendware International, Inc. ("Trendware"), U.S. Robotics Corporation ("U.S. Robotics"), ViewSonic Corporation ("ViewSonic"), WatchGuard Technologies, Inc. ("WatchGuard"), Zonet USA Corporation ("Zonet"), Zyxel Communications, Inc. ("Zyxel").

1 wireless standard. Defendants and Intel disagree and further contend that the '577 Patent is  
 2 invalid and is unenforceable under the doctrines of inequitable conduct and/or unclean hands as a  
 3 result of the conduct of the inventors and the prior assignee of the patents – Axonn Corporation.  
 4 Defendants and Intel also contend that Plaintiff's ability to recover damages is limited because of  
 5 Plaintiff's predecessor's failure to comply with the patent marking requirements of 35 U.S.C. §  
 6 287.

### 7 **III. LEGAL ISSUES**

- 8 1. The construction of the asserted claims of the '577 Patent.
- 9 2. The alleged infringement of the '577 Patent by Defendants and Intel.
- 10 3. The alleged invalidity of the '577 Patent.
- 11 4. The defenses and counterclaims asserted by Defendants.
- 12 5. The alleged unenforceability of the '577 Patent.
- 13 6. NorthPeak's claim for damages.

### 14 **IV. MOTIONS**

#### 15 **a. Prior Motions**

16 On December 5, 2008, Zonet, Trendnet, and Trendware filed motions to dismiss for lack  
 17 of jurisdiction in the U.S. District Court for the Northern District of Alabama. [Dkt. 122, 123,  
 18 124] Also on that day, Zyxel filed a motion to dismiss for lack of jurisdiction and improper  
 19 venue pursuant to Fed. R. Civ. P. Rule 12(b)(2) and (3). [Dkt. 149]

20 On December 16, 2008, several of the defendants jointly filed a motion to transfer venue  
 21 to the Northern District of California. [Dkt. 169] On January 20, 2009, Intel filed a motion to  
 22 intervene. [Dkt. 215]

23 On January 21, 2009, the U.S. District Court for the Northern District of Alabama issued  
 24 an order that: (1) granted the motion to transfer; (2) held that Zonet, Trendnet, Trendware, and  
 25 Zyxel's motion to dismiss was moot; and (3) ordered that the pending motion to intervene by  
 26 Intel would be resolved in the Northern District of California. [Dkt. 224]

1 On March 6, 2009, Intel filed a new motion to intervene with this Court, which granted  
2 the motion on March 27, 2009. [Dkt. 286]

3 On March 10, 2009, Defendants filed an Administrative Motion in *LifePoint v. Cargill*  
4 (Case No. C-93-20352-JW) to Consider Whether Cases Should Be Related. On March 13, 2009,  
5 the Honorable James Ware denied the motion. [Dkt. 297]

6 After the Initial Case Management Conference, this Court set a limit of seven terms to be  
7 construed. [Dkt. 398]

8 On August 28, 2009, the Court entered the parties' stipulation to stay the action pending  
9 reexamination of the patents-in-suit. [Dkt. 426]

#### 10 **b. Pending or Anticipated Motions**

11 The parties anticipate briefing under the Patent Local Rules.

12 The parties also anticipate that they may file motions seeking summary judgment on one  
13 or more aspects of the claims, counterclaims, and defenses asserted in this litigation. For  
14 example, Plaintiff expects to file a motion for summary judgment of no invalidity and possibly  
15 infringement, and Defendants anticipate filing one or more motion for summary judgment on  
16 noninfringement and on one or more of their defenses, such as laches and/or or compliance with  
17 35 U.S.C. § 287.<sup>2</sup> The parties expect to file pre-trial motions, such as motions in limine, and  
18 may file discovery motions if the need arises.

19 Intel and certain of the Defendants believe that the Court and the parties would benefit  
20 from focused early summary judgment motions directed to the specific elements of the asserted  
21 claims in the '577 Patent that were defined in the recently-concluded reexamination proceedings  
22 at the PTO. Plaintiff believes that summary judgment motions are premature before the Court  
23 has construed the terms in the '577 Patent and the Parties have completed fact and expert  
24 discovery.

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25  
26 <sup>2</sup> To the extent that § 5 of Court's Standing Order limits Intel and Defendants to collectively  
27 filing a single motion for summary judgment, Intel and Defendants anticipate that they may  
28 request leave of Court to file their own party-specific motions for summary judgment. The  
parties will meet and confer at the appropriate time.

1           **V.     AMENDMENT OF PLEADINGS**

2           NETGEAR has amended its answer to add a standing defense which came to light during  
3 the recent deposition of one of the inventors, Mr. Rouquette. Intel and the other Defendants are  
4 considering similar amendments based on these new facts.

5           **VI.    EVIDENCE PRESERVATION**

6           All parties have been advised by their counsel to preserve all relevant evidence, including  
7 electronically stored evidence, if any.

8           **VII.   DISCLOSURES**

9           The parties timely served their initial disclosures prior to the entry of the stay.

10          **VIII.   DISCOVERY**

11                  **a.   Discovery To Date**

12           Prior to the stay, the parties served and responded to initial document requests and  
13 interrogatories. The parties also served several third-party subpoenas. Since the stay has lifted,  
14 the parties have served additional third-party subpoenas and discovery requests. The parties have  
15 also exchanged additional interrogatories, and Plaintiff has requested 30(b)(6) deposition  
16 testimony from each Defendant. On February 27, 2015, Plaintiff served amended infringement  
17 contentions on Intel. Third-party inventor Robert Rouquette was deposed on April 21 and 22,  
18 2015.

19                  **b.   Discovery Limitations**

20           The parties have agreed on the following discovery limitations, except where noted.  
21 Where the parties disagree on discovery issues, they have noted their positions below. In  
22 accordance with the Court's instructions (Dkt. 553 at 18), however, the parties will continue to  
23 work together to resolve those issues. Pursuant to guidance from the Court at the Case  
24 Management Conference held on February 13, 2015 (Dkt. 553 at 17-18), the Parties agree that  
25 any group of defendants related as parent/subsidiary or that are under common ownership or  
26 control should be considered to be a single "Defendant" and a single "party" for the purposes of  
27 the following limitations. To avoid any ambiguity, the defendant groups subject to this definition  
28

1 are: (1) Hewlett-Packard Company and 3Com Corporation; (2) Sony Electronics Inc. and Sony  
2 Computer Entertainment America, Inc.; (3) Dell Inc. and SonicWALL, Inc.; (4) Trendnet  
3 Systems, Inc. and Trendware International, Inc.; and (5) Acer America Corporation and  
4 Gateway, Inc.

5 **i. Interrogatories**

6 The Plaintiff may serve up to twenty five (25) interrogatories total on each Defendant and  
7 Intel. The Defendants may serve fifteen (15) common interrogatories on the Plaintiff and an  
8 additional ten (10) individual interrogatories may be served by each Defendant on the Plaintiff.  
9 Plaintiff seeks the same limitations on Intel, which intervened after the original parties'  
10 agreement. Intel believes it is entitled to serve twenty-five (25) interrogatories on Plaintiff as  
11 provided in Fed. R. Civ. P. 33(a)(1).

12 **ii. Request for Admissions**

13 Each party may serve up to fifty (50) requests for admissions on any other party, except  
14 that any party may issue an unlimited number of Requests for Admissions seeking authentication  
15 of documents.

16 **iii. Depositions for Parties and Third-Parties**

17 The Plaintiff shall be entitled to take four hundred fifty (450) hours of deposition  
18 testimony total of parties and third-parties, exclusive of designated expert witnesses (but no more  
19 than 28 hours of depositions as to each Defendant and to Intel).

20 The Defendants and Intel shall be entitled to take a total of three hundred fifty (350)  
21 hours of deposition testimony total of parties and third-parties, exclusive of designated expert  
22 witnesses.

23 Absent agreement, no deposition of a fact witness under Fed. R. Civ. P. 30(b)(1) shall  
24 exceed 7 hours, except that an individual inventor may be deposed for up to [Plaintiff proposes  
25 10 hours] [Defendants and Intel propose 14 hours].  
26  
27  
28

The parties agree that additional deposition time will be permitted for experts whose reports are directed to more than one defendant or who submit more than one report. The Parties will meet and confer in good faith to agree on specific time limitations on expert depositions after service of the Parties' respective expert reports.

[Plaintiff proposes that the time limit for any deposition requiring the use of a translator shall be doubled, but only half the hours used will count against the party's total deposition time in this action (such that, for example, a fact witness requiring a translator may be deposed for up to fourteen (14) total hours, which will count for up to seven (7) hours for purposes of calculating deposition hours used)]. [Defendants and Intel propose that the time limit for any deposition requiring the use of a translator shall be increased by fifty percent, but only the actual hours used will count against the party's total deposition time in this action (such that, for example, a fact witness requiring a translator may be deposed for up to ten and one half hours, which will count for up to seven hours for purposes of calculating deposition hours used)].

The parties agree that testifying experts' draft reports, notes, and outlines of draft reports shall not be subject to discovery in this case, nor shall any such drafts, notes or outlines of draft reports that the testifying expert prepared in other cases, be subject to discovery in this case.

The parties further agree that discovery of materials provided to a testifying expert and the expert's communications in connection with his or her role as a testifying expert in this litigation shall be limited to subject matter that is relevant to those materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying expert in forming his or her final report, trial or deposition testimony, or any opinion in this case. Notwithstanding the foregoing, an expert who is also a fact witness may be subject to discovery concerning his or her relevant factual knowledge.

**vii. Privilege Log**

The parties agree that privileged and/or work product documents created by any party after the filing of the Complaint do not need to be logged. Plaintiff proposes that privileged and/or work product documents that were created since January 1, 2008 as part of the pre-filing investigation of this infringement case also do not need to be logged. Defendants and Intel oppose this proposal.

**viii. Modification**

The above limitations may be modified by agreement of the parties or further Order of the Court.

**c. E-discovery**

The parties agree to negotiate in good faith regarding the scope of electronic discovery and believe that they will be able to submit a proposed joint E-discovery order for the Court's consideration.

**IX. CLASS ACTIONS.**

This is not a class action.

**X. RELATED CASES.**

On March 10, 2009, Defendants filed an administrative motion in *LifePoint v. Cargill* (Case No. C-93-20352-JW) to consider whether this case should be related to that one. On March 13, 2009, the Honorable James Ware denied the motion. [Dkt. 297] The parties are not aware of any other cases that might be considered to be "related" to the present action.

**XI. RELIEF**

NorthPeak seeks damages in an amount to be proven at trial for patent infringement, interest, attorneys' fees, costs, and any other relief that the Court deems just and equitable. Defendants and Intel seek declarations of non-infringement and invalidity, as well as attorneys' fees and costs.

**XII. SETTLEMENT AND ADR**

As required by ADR L.R. 3-5, counsel for the parties have discussed the available ADR



options. The parties are willing to participate in some form of mediation. The parties have agreed to discuss in good faith the format of mediation and will endeavor to conduct the mediation in a manner that is as efficient as possible.

### **XIII. CONSENT TO MAGISTRATE FOR ALL PURPOSES**

Intel and the Defendants are willing to consent to the assignment of this case to a Magistrate Judge for all purposes under the following conditions: the case is and remains assigned to Magistrate Judge Paul S. Grewal and Judge Grewal has no impediment to presiding over the case. NorthPeak does not consent to the assignment of this case to a Magistrate Judge.

### **XIV. OTHER REFERENCES**

The parties do not believe that this suit is suitable for reference to binding arbitration or a special master.

### **XV. NARROWING OF ISSUES**

The parties expect that the patent claim construction decision of disputed claim terms (pursuant to the process set out in the Patent Local Civil Rules) may help to narrow the issues in dispute. Currently, Plaintiff is asserting 5 claims, and Defendants and Intel are asserting 154 prior art references. To streamline the issues for trial, Plaintiff proposes that the Court set deadlines for the Parties to limit the number of asserted claims, prior art references, and obviousness combinations. Specifically, Plaintiff proposes that (1) Plaintiff be limited to 4 asserted claims; (2) Defendants and Intel, collectively, be limited to 8 unique prior art references; and (3) Defendants and Intel, collectively, be limited to a total of 4 unique bases of prior-art invalidity per asserted claim, where a basis is an anticipation reference or a specific obviousness combination of two or more of those 8 references that Defendants and Intel intend to assert. Plaintiff proposes that the deadlines for such limits be discussed and decided at the further case management conference following the Court's Claim Construction Order. Defendants and Intel are willing to meet and confer with Plaintiff on this issue after claims construction.

### **XVI. EXPEDITED TRIAL PROCEDURE**

The parties do not believe that this case can be handled under the Expedited Trial

Procedure of General Order No. 64 Attachment A.

## **XVII. SCHEDULING ISSUES**

The Court has entered the following schedule, which extends through claim construction:

<b>Event</b>	<b>Proposed Date</b>
Case Management Conference	February 13, 2015
Proposed Terms for Construction (Patent L. R. 4-1) due	March 6, 2015
Preliminary Claim Constructions and Extrinsic Evidence (Patent L. R. 4-2) due	March 27, 2015
Joint Claim Construction and Prehearing Statement (Patent L. R. 4-3) and claim construction expert reports due	April 21, 2015
Further Case Management Conference	May 1, 2015
Last day for discovery relating to Claim Construction (Patent L. R. 4-4)	June 5, 2015
Opening Claim Construction Brief (in compliance with Patent Local Rule 4-5(a)) due	June 19, 2015
Opposing Claim Construction Brief(s) (in compliance with Patent Local Rule 4-5(b)) due	July 17, 2015
Reply Claim Construction Brief(s) (in compliance with Patent Local Rule 4-5(c)) due	July 31, 2015
Claim Construction Tutorial	August 19, 2015
Claim Construction Hearing (in compliance with Patent Local Rule 4-6) due	August 26, 2015

At the further Case Management Conference following the claim construction ruling, Intel anticipates seeking to sever and sequence the case to simplify and streamline the

1 proceedings and resources needed to reach resolution for both the Court and the parties. Briefly,  
2 NorthPeak named more than 20 different manufacturers or suppliers of end products having  
3 WiFi chips in the original complaint. Its infringement allegations take aim at the semiconductor  
4 chips involved in transmit functions in those devices. Collectively, the Defendants' accused  
5 devices used semiconductor chips supplied by a wide range of chip manufacturers. Intel is the  
6 only chip manufacturer that intervened in the case. Seven of the defendants are accused of  
7 infringing the NorthPeak patents by selling computers that incorporate Intel's wireless  
8 semiconductor chips.

9 Intel's motion will seek to sever the claims against it from the remainder of the case. The  
10 motion will also propose that the remaining claims in the case be stayed while the case against  
11 Intel proceeds. Resolving the case against Intel first will, as a practical matter, dispose of the  
12 claims against the Defendants that are based on the use of Intel's wireless semiconductor chips.  
13 Focusing first on the Intel case is also likely to simplify and shorten the process of adjudicating  
14 the rest of the case. At this point, Intel has already produced the technical information about its  
15 accused semiconductor chips and is in a position to move expeditiously to position the case for  
16 resolution by motion or trial. Plaintiff has had possession of that Intel discovery for six years,  
17 since before the stay was entered, and recently provided Intel with amended infringement  
18 contentions citing to the technical information relating to the accused Intel semiconductor chips.  
19 In contrast, the balance of the case will depend on information about wireless semiconductor  
20 chips from many other vendors—information that Defendants do not have and cannot provide to  
21 Plaintiff. For example, Plaintiff has yet to obtain discovery from relevant chip vendors other than  
22 Intel or provide amended infringement contentions to any Defendant based on substantive  
23 technical information. Thus, Intel believes that the discovery period required for the non-Intel  
24 portion of the present dispute will be much longer than the discovery period needed for the Intel  
25 portion.

26 As an alternative to staying the non-Intel portion of the case, Intel's motion will propose  
27 that a different and shorter discovery and motion schedule be set for the severed Intel portion.  
28

1 Intel will be prepared to address at the CMC hearing any questions the Court may have about  
2 this severance sequencing proposal.

3 NETGEAR is of the view that joinder against the Defendants is improper and that  
4 Plaintiff should be required to show cause for why joinder is proper. NETGEAR believes that  
5 severance of Plaintiff's claims against NETGEAR into a separate action is the proper remedy for  
6 the misjoinder.<sup>3</sup>

7 Plaintiff does not believe that it would be appropriate to sever and stay any portion of this  
8 case. Defendants and Intel have already stayed the case for nearly five years pending two  
9 consecutive *ex parte* reexaminations. Intel and its customers represent less than a third of the  
10 parties involved in this case, and the question of whether Intel products infringe the '577 Patent  
11 will not necessarily resolve infringement issues related to other non-Intel products. Additionally,  
12 the Intel customers also use products manufactured by other entities; thus, resolving this case as  
13 to the Intel claims will only eliminate Intel as a party to the case. Plaintiff is seeking discovery  
14 from Defendants regarding all of their chip suppliers and the relative volumes associated with  
15 each, as this information will be necessary when considering potential ways to streamline the  
16 case and/or group parties for trial. Plaintiff is willing to discuss potential ways to streamline the  
17 case with Defendants and Intel and will continue such discussions in the coming months.  
18 Plaintiff disagrees with Netgear's argument that this case is improperly joined. If and when Intel  
19 and/or Defendants file the motions they mention above, Plaintiff will respond accordingly.

## 20 **XVIII. TRIAL**

21 Intel and Defendants reserve the right to seek separate jury trials based on the alignment  
22 of parties and issues that remain for trial following dispositive motion practice. Defendants and  
23 Intel anticipate that a jury trial of all issues presently in the case would take approximately  
24 fifteen (15) to twenty (20) days. Plaintiff plans to try this case to a jury and anticipates that a  
25 jury trial would take approximately five (5) to seven (7) days.

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27 <sup>3</sup> If the claims against some or all the parties are severed, the various discovery limitations now  
28 in effect will need to be revisited.

1 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

2 All parties have filed a Certification of Interested Entities or Persons.

3 **XX. PROFESSIONAL CONDUCT**

4 All attorneys of record for the parties have reviewed the Guidelines for Professional  
5 Conduct for the Northern District of California.

6 **XXI. REQUIREMENTS PER N.D. CAL PATENT LOCAL RULES**

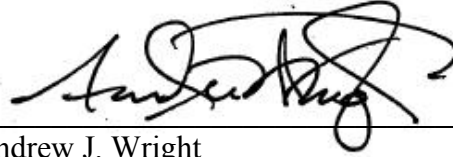
7 As required by the Patent Local Rules, the parties discussed each of the topics listed in  
8 Patent Local Rule 2-1 during their meet and confer. At the Case Management Conference on  
9 February 13, 2015 (Dkt. 553 at 11-12), the Court expressed interest in discussing potential  
10 formats for the claim construction hearing with the Parties. The Parties are willing and prepared  
11 to discuss these issues with the Court.

12 In regard to educating the Court on the technology at issue, the Court has scheduled a  
13 technology tutorial, which will take place on August 19, 2015.

14 **XXII. MISCELLANEOUS TOPICS**

15 The parties agree to electronic e-mail service of all discovery requests and responses to  
16 discovery requests pursuant to Fed. R. Civ. P. 5 and 6.

1 DATED: April 24, 2015



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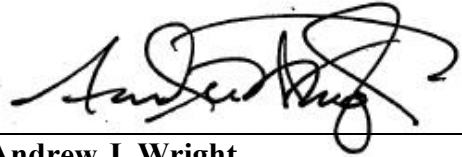
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**CONSENT TO FILING PURSUANT TO GENERAL ORDER 45(X)**

The undersigned hereby attests that written concurrence in the filing of the **Joint Case Management Statement** has been obtained from each of the parties listed in the signature block above.

Dated: April 24, 2015

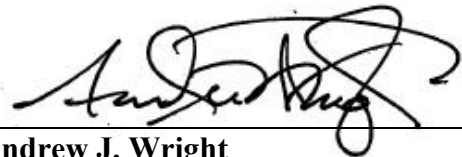


Andrew J. Wright

**NIX, PATTERSON & ROACH, L.L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was electronically filed in compliance with Local Rule CV-5 and served via the Court's electronic filing system on all counsel who have consented to electronic service on April 24, 2015.



Andrew J. Wright

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